

**CITY OF NEWPORT BEACH
PLANNING COMMISSION STAFF REPORT**

February 17, 2011

Agenda Item 4

SUBJECT: Discussion of Operator License Ordinance (PA2010-041)

PLANNER: Jaime Murillo, Associate Planner
949-644-3209, jmurillo@newportbeachca.gov

ISSUE

On January 25, 2011, the City Council adopted Ordinance No. 2011-002 (Attachment No. PC1) amending the Municipal Code to incorporate a new chapter (Chapter 5.25) that will require operators of certain establishments that offer alcoholic beverages for on-site consumption in combination with late hours, entertainment, and/or dance to obtain an Operator License. The Ordinance will become effective on February 24, 2011.

The intent of this agenda item is to provide the Planning Commission with an overview of the Ordinance and answer any questions the Commission may have. The attached January 11, 2011, City Council staff report (Attachment No. PC2) outlines the framework of the Ordinance and discusses how the new Operator License will be administered and enforced. The January 25, 2011, City Council staff report is also attached (Attachment No. PC3), which outlines certain modifications the Council made to the draft ordinance.

It is important to note that the new Operator License requirement does not modify the existing requirements of the Zoning Code for certain establishments to obtain a conditional use permit, but rather provides an additional enforcement tool that would allow for greater control and regulation of an operation once a use permit has already been issued. With that said, a condition of approval for new use permits will include a requirement for operators to obtain and maintain an Operator License in order to enjoy the privileges of late hours, entertainment, or dancing.

Prepared by:


Jaime Murillo, Associate Planner

Submitted by:


Patrick J. Alford, Planning Manager

ATTACHMENTS

PC 1 Ordinance No. 2011-002 (Chapter 5.25- Operator License)

PC 2 January 11, 2011, City Council staff report

PC 3 January 25, 2011, City Council staff report

Attachment No. PC 1

Ordinance No. 2011-002

ORDINANCE NO. 2011-002

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF NEWPORT BEACH, ADDING CHAPTER
5.25 TO THE CITY OF NEWPORT BEACH MUNICIPAL
CODE TO REQUIRE ESTABLISHMENTS THAT OFFER
ALCOHOLIC BEVERAGES FOR ON-SITE
CONSUMPTION IN COMBINATION WITH LATE
HOURS, ENTERTAINMENT, OR DANCING TO OBTAIN
AN OPERATOR LICENSE (PA2010-041)**

WHEREAS, the City of Newport Beach ("City") is a charter city, governed by a charter adopted by the citizens of the City; and

WHEREAS, Article XI, Section 5 of the Constitution of the State of California authorizes charter cities to enact ordinances in respect to their municipal affairs; and

WHEREAS, the City finds and declares that the majority of establishments which provide alcoholic beverages for on-site consumption in combination with late hours, entertainment, and/or café dance have modes of operation and location attributes which allow them to appropriately provide service to the residents and visitors of the City of Newport Beach; and

WHEREAS, the City finds and declares that the foregoing notwithstanding, absent appropriate controls, alcoholic beverages for on-site consumption in combination with late hours, entertainment and/or café dance increases the potential for operational impacts including, but not necessarily limited to, noise, loitering, litter, and disorderly conduct by patrons; and

WHEREAS, the City finds and declares that the cited impacts affect both the neighborhoods in which such establishments are located and the public safety resources of the City of Newport Beach; and

WHEREAS, the City finds and declares that the cited impacts relate largely to the operation of the establishment rather than to its design or architecture; and

WHEREAS, the City finds and declares that in order to provide an appropriate level of control to such uses and to provide the means by which public safety can be maintained, the regulation of operators provides the most direct means of enforcing appropriate operational controls on establishments which provide alcoholic beverages for on-site consumption in combination with late hours, entertainment, and/or café dance; and

WHEREAS, the City finds that the proposed code amendment will not result in a direct or reasonably foreseeable indirect physical change in the environment (Section 15060(c)(2) of the California Environmental Quality Act Guidelines); and

WHEREAS, this agenda item has been noticed in accordance with the Ralph M. Brown Act (72 hours in advance of the public meeting). The item appeared upon the agenda for this meeting which was posted at City Hall and on the City website.

NOW, THEREFORE, the City Council of the City of Newport Beach ordains as follows:

SECTION 1: Chapter 5.25 of the Newport Beach Municipal Code is hereby added to read as follows:

Chapter 5.25
OPERATOR LICENSE FOR ESTABLISHMENTS OFFERING ALCOHOLIC
BEVERAGES FOR ON-SITE CONSUMPTION IN COMBINATION WITH LATE
HOURS, ENTERTAINMENT, AND/OR DANCE

5.25.010 License Required.

No person or entity shall operate, or engage in, any business or commercial enterprise defined as "Bar, Lounge, and Nightclub", or which does or intends to offer alcoholic beverages for on-site consumption in combination with "Food Service with Late Hours", as defined at Chapter 20.70 of this Code or as same may be amended from time to time, or any business or commercial enterprise that does or intends to offer alcoholic beverages for on-site consumption in combination with "Entertainment" as defined at Chapter 5.28 of the Code, or "Café Dance" as defined at Chapter 5.32 of this Code, until that person or entity has first obtained an Operator License pursuant to this chapter.

5.25.020 Applicability to Existing Businesses and Enterprises.

The provisions of this chapter shall apply prospectively and shall not operate to revoke any valid permit or other approval in effect as of the date of the ordinance codified in this chapter. The foregoing notwithstanding, the provisions of this chapter shall be deemed to require an Operator License in any of the following instances:

- A. The approval or amendment of a use permit, as required by Title 20 of this code.
- B. The issuance of a building permit for modifications comprising a change in the type of occupancy or an increase in the maximum occupant capacity of an establishment, as defined by the Uniform Building Code.
- C. As a result of a negotiated restitution or agreement to resolve or settle any administrative, civil, or criminal matter relating to any violation of this Code.
- D. As required by an order of judgment in a civil or criminal case brought by the City of Newport Beach.
- E. Transfer of a business operating pursuant to an issued Operator License, as required by Section 5.25.070 of this chapter.

- F. The re-establishment of a business or commercial enterprise subsequent to its loss of non-conforming status as set forth in Chapter 20.38 of this Code.

5.25.030 Application for an Operator License.

Applications for an Operator License shall be filed with the Chief of Police on forms supplied by the City, and shall be accompanied by a fee established by resolution of the City Council, which shall be no more than necessary to cover the costs of processing the application and investigation of the contents and statements therein. Where an Operator License application is required in relation to the processing or amendment of a use permit required by Title 20 of this Code, such application may be filed and processed concurrently. The following provisions will apply in cases where a use permit and Operator License are concurrently processed:

- A. Notwithstanding Paragraph 5.25.060 below, the Police Chief shall not be obligated to issue a determination within 45 days of the filing of a complete application for an Operator License if the processing of the use permit extends beyond that time limit; and,
- B. An Operator License processed concurrently with a use permit shall not become effective prior to the effective date of the use permit.

5.25.040 Application Requirements.

The following information shall be submitted to the Chief of Police by the business owner at the time of submitting an application for an Operator License. Such information shall be submitted in accordance with forms, drawing instructions, and in a quantity of copies as determined by the Chief of Police:

- A. A description of business or commercial enterprise and anticipated occupancy;
- B. A site plan describing the building and/or unit proposed for the premises and a fully dimensioned floor plan, including outdoor dining areas;
- C. A plan of operations describing the following:
 - 1. The type of Alcohol Beverage Control License held or sought;
 - 2. A description of any proposed nature of entertainment and/or dance use of the premises;
 - 3. The hours of operation for the business or commercial enterprise, at minimum indicating the hours of employees on site and hours open to patrons;
 - 4. A security plan, if any, addressing such matters as personnel, the functions of those personnel and employee training;
 - 5. A plan, if any, for contact with the Police Department, neighboring residents or businesses in the event of planned activities or emergencies; and
 - 6. Features, if any, in the method of operation which may be material to the consideration by the Chief of Police in issuing the permit.
- D. The application shall contain the following information:
 - 1. The business owner's name, residence street address, and mailing address, if different, and California driver's license number and any and all aliases;
 - 2. The name under which the business or commercial enterprise is to be operated;
 - 3. The telephone number of the business or commercial enterprise and the address and legal description of the parcel of land on which the enterprise is located;

4. The date on which the business owner acquired the business or commercial enterprise for which the permit is sought, and the date on which the business or commercial enterprise began or will begin operations at the location for which the permit is sought;
5. If the business or commercial enterprise is owned and/or operated by a corporation, or other limited liability entity, the name of each officer and director of the corporation. If the enterprise is owned and/or operated by a partnership, the name of each general partner of the partnership;
6. A statement under oath that the business owner has personal knowledge of the information contained in the application and that the information contained is true and correct;
7. A statement that the business owner has read and understands the provisions of this chapter;
8. A statement whether the business owner previously operated in this or any other County, City or State under an entertainment establishment license/permit or similar business license, and whether the owner has ever had such a license revoked or suspended and the reason therefore, and the business entity or trade name under which the business owner operated that was subject to the suspension or revocation; and
9. If the premises are being rented or leased or being purchased under contract, a copy of such lease or contract shall accompany the application.

5.25.050 Issuance of License—Criteria and Findings

- A. Upon receiving an application for an Operator License, the Chief of Police shall conduct an investigation, which may include referral of the application to other City departments, including but not limited to Fire, Planning, Building and/or Code Enforcement, to determine if the proposed business is in compliance with this chapter and other applicable provisions of this Code. Each department shall make written recommendations to the Chief of Police.
- B. At least 21 calendar days prior to the decision on the issuance of a license, notice shall be mailed to the applicant and all owners of property within 300 feet, excluding intervening rights-of-way and waterways, of the boundaries of the site, as shown on the last equalized assessment roll or, alternatively, from such other records as contain more recent address. The notice shall indicate that written comments to the decision of the Chief of Police will be accepted until the date of the decision indicated on the notice.
- C. Approval of an Operator License pursuant to this chapter shall be subject to the Chief of Police making each and all of the following findings:
 1. The business or enterprise is proposed to be located in a zone permitting the proposed use under Title 20 of this Code, and is subject to such use permits as may be required;
 2. In the case of a business or enterprise offering "Entertainment," as defined, the premises meets all of the criteria in Chapter 5.28.040.B.2-7;
 3. The site plan and proposed premises improvements as proposed, or as subject to such conditions as are attached to the approval, are consistent with the use and the plan of operations; and

4. The plan of operations as proposed, or as subject to such conditions as are attached to the approval, is adequate in light of the neighborhood in which the business or enterprise is located and supports the public health, safety and welfare of the community.
- D. The Chief of Police, at the time of license approval may attach additional conditions and requirements to the license as may be determined to be necessary in order to make the foregoing findings. In no case shall the conditions be inconsistent with, or less restrictive than, those required by any applicable use permit. Such additional conditions may include, but not necessarily be limited to:
 1. An obligation to comply with Title 20 of this Code, all conditions of approval of any applicable use permit, and any other applicable provision of the Municipal Code;
 2. Hours of operation for the enterprise or business, or any particular activity in part thereof, including but not limited to commercial deliveries, food service, dancing, live entertainment, or sound amplification for entertainment purposes;
 3. Exterior lighting, traffic management devices, security facilities or other such appurtenances, so long as such improvements may be constructed or made in compliance with other applicable provisions of this Code;
 4. Hiring, training, qualifications, and record-keeping requirements for employees, staff and security personnel of the business or enterprise;
 5. A plan and schedule of the frequency of on-site compliance reviews of the business or enterprise by the Police Department or other agents of the City of Newport Beach;
 6. The development and implementation of written plans by the licensee addressing how the licensee will meet the requirements of this chapter and may include crowd management, parking management, noise management, complaint response, and performance improvement; and
 7. Specified provisions regarding the level and methods of measurement of noise to limit or prohibit audible sound at the property line of the establishment.

5.25.060 Notice of Determination

- A. Except in such cases as provided in paragraph 5.25.030.A, above, the Chief of Police shall make a determination on an application for an Operator License within 45 days of such application being deemed complete.
- B. The applicant shall be served with written notice of the decision, including the findings made by the Chief of Police in conditionally approving or denying the Operator License. Notice shall be personally served or served by deposit in the United States mail, first class postage prepaid, at the address shown on the application. Service shall be deemed complete upon personal service or deposit in the United States Post Mail.
- C. The determination of the Chief of Police to deny or to place conditions upon the approval of an Operator License shall be appealable by the applicant or any interested party. Such appeal shall be made in writing to the City Manager, within 15 days of the postmark date of the Chief of Police's notice of decision. The appeal shall set forth the particular condition and the reasons that the applicant or any interested party believes the findings or decision is in error. The City Manager shall

make a determination on the appeal based on the application materials, the written determination of the Chief of Police and the written appeal of the applicant or any interested party. The City Manager may take any of the following actions on the appeal:

- a. Deny the appeal and affirm the determination of the Chief of Police and the conditions contained therein; or,
 - b. Approve the appeal and/or approve or modify an appealed condition; or,
 - c. Refer the application to the Chief of Police for further investigation and determination to be completed by a date certain.
- D. The action of the City Manager to deny the appeal and affirm the determination of the Chief of Police or to approve the appeal and/or approve or modify an appealed condition shall be final, any other provision of this Code to the contrary notwithstanding.

5.25.070 Operator License Nontransferable.

No Operator License issued pursuant to this chapter shall be sold, transferred, or assigned by any license holder, or by operation of law, to any other person, group, partnership, corporation or any other entity, and any such sale, transfer or assignment, or attempted sale, transfer or assignment shall be deemed to constitute a voluntary surrender of such license, and such license shall be, thereafter, null and void. A license held by an individual in a corporation or partnership is subject to the same rules of transferability as contained above. License shall be valid only for the exact location specified in the license.

5.25.080 Revocation, Suspension or Modification of License for Cause.

The Chief of Police may commence a process to revoke, suspend or modify an Operator License issued under the provisions of this chapter should there be reasonable suspicion of any of the following:

- A. The licensee has ceased to meet the requirements for issuance of license;
- B. The applicant gave materially false, fraudulent or misleading information within the application;
- C. Impacts emanating from the establishment for which the license was issued has substantially interfered with the peace and quiet of the neighborhood;
- D. The licensed business or activity has operated in violation of any of the requirements of this chapter, the license as issued, or any condition thereof.

The Chief of Police shall notify the operator of the commencement of such revocation, suspension or modification process and shall conduct an investigation to determine if, and to what degree, one or more of the foregoing has occurred. Upon completion of the investigation, the Chief of Police may add, delete or modify the license conditions. The Chief of Police shall notify the applicant regarding the determination of the Operator License, on the outcome of the investigation, and the action taken. The applicant or any interested party may appeal a determination or an added or modified condition of approval to City Manager in the manner set forth in 5.25.050.C-D, above.

5.25.090 Licenses and Fees Not Exclusive.

Fees and licenses required by this chapter shall be in addition to any license, permit or fee required under any other chapter of this Code.

5.25.100 Penalty.

A. Any violation of this chapter is subject to those remedies provided for in Chapters 1.04 and 1.05 in addition to any other remedies allowed by State and Federal law.

B. Any violation of this chapter is hereby declared to be a public nuisance. (Ord. 2009-27 § 1 (part), 2009)

SECTION 2: If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity of constitutionally of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

SECTION 3: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the same to be published once in the official newspaper of the City, and it shall be effective thirty (30) days after its adoption.

SECTION 4: This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach, held on the 11th day of January 2011, and adopted on the 25th day of January, 2011, by the following vote, to wit:

AYES, COUNCILMEMBERS _____

NOES, COUNCILMEMBERS _____

ABSENT COUNCILMEMBERS _____

MAYOR _____

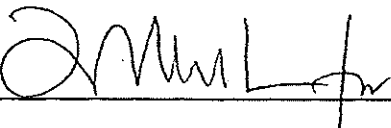
ATTEST:

By _____

LEILANI BROWN, CITY CLERK

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

By  1/13/10

DAVID R. HUNT, CITY ATTORNEY

Attachment No. PC 2

January 11, 2011 City Council Staff Report

CITY OF NEWPORT BEACH CITY COUNCIL STAFF REPORT

Agenda Item No. 4
January 11, 2011

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Planning Department
Jaime Murillo, Associate Planner
949-644-3209, jmurillo@newportbeachca.gov

SUBJECT: Municipal Code Amendment to Require an Operator License for Certain Establishments that Offer Alcoholic Beverages for On-Site Consumption in Combination with Late Hours, Entertainment, and/or Dance (PA2010-041)

ISSUE

An amendment to the City of Newport Beach Municipal Code incorporating a new chapter (Chapter 5.25) that will require establishments that offer alcoholic beverages for on-site consumption in combination with late operating hours, entertainment, and/or dancing to obtain an Operator License.

RECOMMENDATION

1. Introduce Ordinance No. 2011-____ (Attachment No. CC1) amending the Newport Beach Municipal Code and incorporating Chapter 5.25 establishing the requirement for an Operator License and pass to second reading on January 25, 2011.
2. Adopt Resolution No. 2011-____ (Attachment No. CC2) establishing the application fee for an Operator License.

BACKGROUND

Study Session Discussion

At the April 27, 2010 Study Session, the City Council heard a staff presentation related to the potential regulation of businesses with on-sale alcohol licenses that are open late hours or offer entertainment (City Council Minutes- Attachment No. CC3). Council

Members expressed their concerns and indicated support of an ordinance that would require such establishments to obtain an Operator License. The license would:

- Be issued to the operator and not be transferable to a subsequent new owner of the establishment;
- Be revocable for cause should an establishment be the source of nuisance; and,
- Apply to establishments that require a new use permit, or an amendment of an existing use permit, per the Zoning Code.

DISCUSSION

Summary of the Proposed Chapter

Who would be regulated, and by whom? The proposed Chapter 5.25 would require an Operator License for businesses which constitute a Bar, Lounge, or Nightclub¹, or other businesses which offer alcoholic beverages for on-site consumption in combination with the operation of Late Hours², Entertainment³, or Café Dance⁴. The Operator License allows for the enhanced control of noise, loitering, litter, disorderly conduct, parking/circulation, and other potential disturbances related to the operation of an establishment where alcohol is dispensed. Some key facets of the regulation would be:

- The license would be issued and enforced by the Chief of Police, with appeals of all such actions to the City Manager.
- The license would not be transferable if the operator of the establishment changes.
- Should cause arise from the operation of the business, the license could be subject to revocation, suspension and/or amendment by the Chief of Police. The Chapter contains a due process whereby such decisions, as well, would be appealable to the City Manager.

¹ Bar, Lounge, and Nightclub is defined as an establishment that sells or serves alcoholic beverages for consumption on the premises and is holding or applying for a public premise license from the California State Department of Alcoholic Beverage Control (ABC) (i.e., ABC License Type 42 [On Sale Beer & Wine-Public Premises], ABC License Type 48 [On Sale General-Public Premises], and ABC License Type 61 [On Sale Beer-Public Premises]). Persons under 21 years of age are not allowed to enter and remain on the premises. (NBMC Section 20.70.020)

² Late Hour Operations is defined as facilities that provide service after 11:00 p.m. (NBMC Section 20.70.020)

³ Entertainment is defined as any act, play, burlesque show, revue, pantomime, cabaret, fashion or style show, scene, dance, song, song and dance act, or instrumental music participated in by one or more employees, guests, customers or any other person or persons. (NBMC Section 5.28.010)

⁴ Café Dance is defined as any dance which is open to the public without the payment of an admission fee, which is conducted in a restaurant, cafe, night club, bar, coffee house, or other place where food or beverages are sold for consumption on the premises. (NBMC Section 5.32.010)

Would existing businesses be affected? The Chapter would be implemented prospectively and not applicable to existing establishments, unless:

- Application for, or modification of, a use permit is required by the Zoning Code.
- Modifications are proposed to an establishment that would change the occupancy type or increase occupancy capacity, as defined by the Building Code.
- Re-establishment of a business after a previous non-conforming status is lost.

The Chapter also includes the provision that an Operator License may also be required from an establishment's operator as an outcome of an enforcement action, either by being required as judgment in favor of the City or as part of a compliance agreement voluntarily entered into by the operator to remedy a code violation.

How would the Operator License be processed? Applicants for an Operator License would submit an application to the Chief of Police, who would have 45 days to render a decision. The Operator License would be processed concurrently in cases where a use permit or an amendment to a use permit is required by the Zoning Code, which will likely comprise the majority of such applications. In such instances, the 45-day limitation would not apply, and the Operator License would be issued upon the effective date of the new or amended use permit.

The application for an Operator License would require both illustrative plans for the establishment and a written plan of operation. If the required findings related to compliance with the Municipal Code and the general public health, safety and welfare are established, the Operator License would be issued by the Chief of Police. The Operator License would require Code compliance and may be subject to certain specific conditions on operations, including limits on time for particular activities (e.g. permitted hours for live entertainment or dancing), certain physical improvements to the site (e.g. signage, sound attenuation, etc.), and security provisions (e.g. security plans and personnel, crowd management, noise management, etc.).

Would the Operator License replace existing permit requirements? The Municipal Code currently regulates the sale of alcohol and the operation of similar businesses in a number of ways, including a Zoning Code requirement for a use permit. Elsewhere, the Municipal Code provides for the administrative issuance of Live Entertainment Permits (Chapter 5.28) and Café Dance Permits (Chapter 5.32). At this time, staff does not propose amendments to these processes or permits, which serve slightly different regulatory functions and operate under slightly different criteria. However, staff is sensitive to the overlap in these permits. In light of the anticipated applications for use permit and use permit amendments related to this regulation, staff recommends that the City Council move forward with this action at this time. Staff would welcome the City

Council's direction to staff to evaluate the related permits, inventory the holders of those permits, and return with Municipal Code refinements to address redundancies.

How much would the Operator License Cost? Staff has reviewed the time and processing needs for the application of a new Operator License and has estimated the average unit cost recovery amount to be \$656.00.

Should the City Council decide to adopt and pass the subject ordinance for second reading, the City Council should also adopt the attached draft resolution establishing the application fee. The resolution has an effective date of January 25, 2011, to coincide with date of the second reading of the ordinance.

How would the Operator License be Enforced?

The proposed ordinance provides for direct, tailored enforcement of City regulations and the conditions of the Operator License. Issued licenses would be enforced by the Police Department. Because the license would contain operating conditions, rules would be spelled out for each particular business, making clear the performance standards that would need to be maintained. If significant problems with the operation are found to exist subsequent to the issuance of a license, or if the conditions of the license are violated, the Police Department may modify (i.e. further restrict hours, prohibit live entertainment, etc.), suspend, or revoke the license. Operators failing to operate within the conditions of a license or refusing to secure a license may be issued administrative citations and may be prosecuted for a misdemeanor. An appeal process involving review by the City Manager and litigation would still be available to an aggrieved operator. The ability of the Police Department and the operator to enter into discussion on how to resolve problem operations or events through the existence of a license should simplify efforts to achieve compliance for the benefit of, both, law enforcement and Operator License holders.

Environmental Review

The Code Amendment is not subject to the California Environmental Quality Act (CEQA) because:

1. The proposed Code Amendment will not result in a direct or reasonably foreseeable indirect physical change in the environment (Section 15060(c)(2) of the CEQA Guidelines).
2. The proposed Code Amendment will not result in physical changes in the environment different in any way from those changes which are controlled and would result from the outcome of other processes which are simultaneously applicable.

3. The Code Amendment is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3) of the CEQA Guidelines).

Public Notice

This item was included on the agenda for this meeting which was posted at City Hall and on the City's web site.

Funding Availability

The proposed Chapter provides for full cost recovery of the City's expenditures in the review and issuance of Operator's Licenses.

Alternatives


The City Council may determine to:

1. Deny the proposed Municipal Code amendment, retaining existing controls on establishments that offer alcoholic beverages for on-site consumption;
2. Modify the proposed Municipal Code amendment and specifically state such modification or refer to staff for redrafting;
3. Continue the public hearing for further discussion; or
4. Provide additional direction to staff.

Prepared by:

Submitted by:


Jaime Murillo
Associate Planner


James W. Campbell
Acting Planning Director

Attachments:

~~GC 1 Draft Ordinance establishing Operator License for establishments that offer alcoholic beverages for on-site consumption in combination with late hours, entertainment, and/or dance~~

~~CC2 Draft Resolution establishing the application fee for an Operator License~~

CC 3 Minutes of the Study Session of the City Council, April 27, 2010

Attachment No. CC 3

April 27, 2010 City Council Minutes

CITY OF NEWPORT BEACH

City Council Minutes
City Council Study Session
April 27, 2010 – 4:00 p.m.

I. ROLL CALL

Present: Council Member Selich, Council Member Rosansky, Mayor Pro Tem Henn, Mayor Curry,
Council Member Gardner

Excused: Council Member Webb, Council Member Daigle

II. CURRENT BUSINESS

1. CLARIFICATION OF ITEMS ON THE CONSENT CALENDAR.

In response to Council Member Gardner's question regarding Item 4 (Parking Meter and Parking Lot Fee Increases), Administrative Services Director McCraner indicated that the proposed rates are competitive with neighboring cities without having premium rates on the weekend. Further, premium rates were not considered since the rate increase is significant compared to the current rates. However, they can analyze utilizing premium rates further if desired.

In response to Mayor Pro Tem Henn's question regarding Item 5 (Landfill Rate Adjustment for Solid Waste Disposal Agreements), General Services Director Harmon reported that the increase is equal to the landfill rate increase.

Regarding Item 8 (Balboa Boulevard Pavement Rehabilitation), Mayor Pro Tem Henn agreed with staff's comments relative to the quality of the work.

Mayor Curry requested and received clarification from Assistant City Manager Wood that Item 20 (Inclusionary Housing) can be continued.

Without objection, Council will be allowing staff to go over the Civic Center items (Items 22 and 23) after the discussions about the proposed at-grade parking lot at 608 East Balboa Boulevard (Item SS3).

2. SEPARATION OF RESTAURANT USE PERMITS INTO OPERATOR AND LAND USE PERMITS.

PowerPoint Presentation

Revised PowerPoint Presentation

Associate Planner Murillo utilized a PowerPoint presentation to discuss the problems associated with bars and nightclubs, the criteria that changes a restaurant into a bar or nightclub, amplified music issues, land use tools that the City utilizes, land use regulations versus operating permits, and the use of live entertainment permits as an operating permit. He reported on proposed revisions to the live entertainment permit and its benefits, and also discussed more aggressive options that 1) creates a new operating permit that also regulates entertainment in any establishment that serves alcohol; and 2) pursues full revocation of use permits for problem establishments with continual violations of use permit conditions. He indicated that the amended regulations would only apply to new establishments, unless an existing establishment amended its use permit or becomes a nuisance and is called up for

review.

In response to Council questions, Associate Planner Murillo reported that the City can also regulate late operating hours and food service. Acting City Attorney Mulvihill added that the State regulates the sale of alcohol, but the City has local control over the tone, place, and manner of the use of an establishment and how it impacts neighborhood compatibility. She pointed out that the City has an Alcoholic Beverage Operations (ABO) permit that applies to existing and new establishments, establishments that never applied for the ABO permit, and nuisance establishments. She reiterated that the proposal is to expand the permit to also address entertainment.

Council Member Selich stated that the City is sometimes faced with the situation where good operators sell the establishment and the permit is automatically transferred to the new operator since it runs with the land. He indicated that the options provide the City with a better way to deal with enforcement issues and possibly revoke the permit if necessary.

Council Member Gardner explained how this could make the City more generous in issuing permits than it has been in the past because there will now be options. She noted that the concept was well-accepted by the Business Improvement District members.

Mayor Pro Tem Henn expressed concern that the regulation would only apply to new operators. Associate Planner Murillo clarified that the provisions would also apply to current establishments seeking amendments to their permits. He added that nuisance establishments can be called up for review at any time and that this would then apply to them.

George Schroeder believed that this is a step in the right direction since there are problems with some of the establishments. However, he questioned why establishments need to stay open so late.

Joe Reiss expressed support for the more aggressive option.

Following discussion, it was the consensus of the City Council to begin the process for implementation of the more aggressive option.

3. PROPOSED AT-GRADE PARKING LOT AT 608 EAST BALBOA BOULEVARD.

Staff Report

Assistant City Manager Wood provided a staff report and explained the difference between Option 1 at \$265,000 and Option 2 at \$132,000. She also discussed the option to build a curved wall and install a Balboa Village identification sign that would allow space for temporary advertisement of local events.

Mayor Pro Tem Henn noted that it might be awhile before the need to build a parking garage arises, and recommended moving forward with Option 1 since it is a more attractive option and the revenue from the meters could end up repaying for the cost of the improvements. He also expressed support for installing the Balboa Village identification sign.

Noting that the Balboa Village Business Improvement District (BID) is proposing to repay the City for a portion of the cost of the sign, Council Member Gardner suggested that they increase their payments if their budget allows. Assistant City Manager Wood noted that this BID has one of the lowest budgets of all the BIDs. Council Member Gardner expressed support for Option 1. She noted that the City is trying to save money, but having a plain parking lot is not the vision for the Village.

Council Member Selich also expressed support for Option 1 and pointed out that the sign

Attachment No. PC 3

January 25, 2011 City Council Staff Report

CITY OF NEWPORT BEACH CITY COUNCIL STAFF REPORT

Agenda Item No. 4
January 25, 2011

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Planning Department
Jaime Murillo, Associate Planner
949-644-3209, jmurillo@newportbeachca.gov

SUBJECT: Second Reading and Adoption of Ordinance No. 2011-002 Pertaining to a Municipal Code Amendment to Require an Operator License for Certain Establishments that Offer Alcoholic Beverages for On-Site Consumption in Combination with Late Hours, Entertainment, and/or Dance (PA2010-041)

ISSUE

The Ordinance will require establishments that offer alcoholic beverages for on-site consumption in combination with late operating hours, entertainment, and/or dancing to obtain an Operator License. The Ordinance also includes a process to appeal the determination on an Operator License and requires the establishment of an appeal filing fee.

RECOMMENDATION

1. Conduct second reading and adopt Ordinance No. 2011-002 (Attachment No. CC1) amending the Newport Beach Municipal Code and incorporating Chapter 5.25 establishing the requirement for an Operator License.
2. Adopt Resolution No. 2011-____ (Attachment No. CC2) establishing the fee for filing an appeal of the Chief of Police's determination on an Operator License.

DISCUSSION

Council Revisions to Ordinance

Ordinance No. 2011-002 was introduced and considered at the January 11, 2011, City Council meeting. A copy of the staff report is attached as Attachment No. CC3. The Council included the following changes to the draft ordinance prior to its introduction:

1. Within Section 5.25.050.B, include a requirement that a notice be mailed to all property owners within a 300-foot radius of an establishment for which an operator is seeking a license and allow for written comments to be submitted for consideration. Such notice shall be mailed a minimum of 21 days prior to the decision on the issuance of a license.
2. Within Section 20.25.050.D, add a sentence clarifying that in no case shall the conditions of an Operator License be inconsistent with, or less restrictive than, those of required by any applicable use permit.
3. Within Sections 5.25.060.C and 5.25.080, allow "any interested party" the right to appeal the determination on the issuance, revocation, suspension, or modification of an Operator License.

The revisions have been incorporated within the ordinance (Attachment No. CC1).

Appeal Fee

At the January 11, 2011, meeting, the City Council established an application fee for an Operator License; however, an appeal filing fee was not established. Based on the established hourly rates, the calculated appeal filing fee would be \$656.00.

ENVIRONMENTAL REVIEW

The Code Amendment is not subject to the California Environmental Quality Act (CEQA) because:

1. The proposed Code Amendment will not result in a direct or reasonably foreseeable indirect physical change in the environment (Section 15060(c)(2) of the CEQA Guidelines).
2. The proposed Code Amendment will not result in physical changes in the environment different in any way from those changes which are controlled and would result from the outcome of other processes which are simultaneously applicable.
3. The Code Amendment is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3) of the CEQA Guidelines).

PUBLIC NOTICE

This item was included on the agenda for this meeting which was posted at City Hall and on the City's web site.

FUNDING AVAILABILITY

The proposed Chapter provides for full cost recovery of the City's expenditures in the review and issuance of Operator Licenses.

Prepared by:

Submitted by:


Jaime Murillo
Associate Planner


James W. Campbell
Acting Planning Director

Attachments:

- ~~CO 1 Ordinance No. 2011-002 establishing an Operator License for establishments that offer alcoholic beverages for on-site consumption in combination with late hours, entertainment, and/or dance.~~
- ~~CC 2 Draft Resolution establishing the filing fee for the appeal of an Operator License.~~
- ~~CO 3 January 11, 2011, City Council Staff Report~~